Supreme Court, U.S.
FILED
JUL 20 1982
Alexander L. Stevas, Clerk

NO. 81-2105

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1981

LARRY MIZELL, Warden, Vienna Correctional Center,

Petitioner,

vs.

GARY WELSH,

Respondent.

MOTION TO STRIKE MATERIAL IN PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Respondent, Gary Welsh, by his attorneys, JENNER & BLOCK, hereby moves to strike Appendix E (Petition at 29a-34a) from the Petition for Writ of Certiorari. The material contained in Appendix E was not submitted to the district court. It was rejected for filing by the court of appeals when the Petitioner attempted to file the material after referring to it in oral argument. (Order of court of appeals dated October 28, 1981, appended hereto as Exhibit A.) The affidavit which the State submits contains material inaccuracies and inferences which are subject to dispute. The court of appeals specifically ruled that these materials "are not suitable for judicial notice in this appeal." This material is not properly before this court and should be stricken pursuant to Rule 34.6 of the Supreme Court Rules.

The Respondent also moves to strike the Petitioner's erroneous statements that he was convicted of rape. (Petition

for Writ of Certiorari pages 1, 14.) The Respondent was acquitted on the charge of rape, People v. Welsh, 30 Ill.App.3d 887, 887-88, 333 N.E.2d 572, 573 (1975). The Petitioner's references to Respondent's conviction or commission of rape are improper and prejudicial, and should, therefore, be stricken.

GARY WELSH, Respondent

By Laura A. Kaster
One of his Attorneys

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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

October 28, 19 81

Before

Hon. WALTER J. CUMMINGS, Chief Judge

Hon. _____

Hon. _____

GARY WELSH,
Petitioner-Appellant,

No. 80-1862 vs.

LARRY MIZELL, Warden,
Vienna Correctional Center,
Respondent-Appellee.

Appeal from the United States District Court for the Southern District of Illinois, Benton Division.
No. 80-C-4104
Judge William L. Beatty

This matter comes before the court for its consideration upon the "PETITIONER-APPELLANT'S OBJECTION TO THE STATE'S MOTION FOR LEAVE TO FILE" filed herein on October 2, 1981, by counsel for the petitioner-appellant. Treating this objection as a motion to reconsider this court's order of October 1, 1981,

IT IS ORDERED that said motion is hereby GRANTED. Upon reconsideration,

IT IS ORDERED that the respondent-appellee's motion for leave to file an affidavit and exhibit relating to the parole board's denial of parole is hereby DENIED, since the materials tendered are not suitable for judicial notice in this appeal.

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EXHIBIT A